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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,752	04/08/2004	William R. Murphy JR.	005-040001US	1862
33486 7590 12/31/2007 HEIMBECHER & ASSOC., LLC P O BOX 33 HAMEL, MN 55340-0033			EXAMINER NGUYEN, CHI Q	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 12/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/821,752

**Applicant(s)**

MURPHY ET AL.

**Examiner**

Chi Q. Nguyen

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 35-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-34 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/7/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

This Office action is in response to applicant's patent application filed on 4/8/2004.

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121.

I. Claims 1-34, drawn to an apparatus of a sanitary cove base, classified in class 52, subclass 287.1.

II. Claims 35-41, drawn to an apparatus of a molded corner, classified in class 52, subclass 277.

The inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP 806.04, MPEP 808.01).

In the instant case, the different inventions of claims in group I could be used without a molded corner.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purpose as indicated is proper.

During a telephone conversation with Mr. Reed Heimbecher on 12/21/2007 a provisional election was made without traverse to prosecute the invention of group I, claims 1-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 35-41 withdrawn from further consideration by the examiner as being drawn to a nonelected invention.

### ***Specification***

The abstract of the disclosure is objected to because applicant is advised not using a claimed language "comprising" in the abstract. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

Claim 2 is objected to because of the following informalities: applicant is advised to spell out ABS and PVC. Appropriate correction is required.

Claim 27 is objected to because of the following informalities: an ending period is missing. Correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 24, 32 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 6,457,287 to Wilcox.

Claim 1:

Wilcox discloses a sanitary cove base comprising an outer wall 22; an inner wall 24; a plurality of longitudinally-extending web members 28 existing between said outer wall and said inner wall, thereby connecting said outer wall to said inner wall; and a plurality of hollow channels 30, each hollow channel being defined between said inner wall, said outer wall, a first longitudinally-extending web member of said plurality of longitudinally-extending web members, and a next adjacent longitudinally-extending web member of said plurality of longitudinally-extending web members (See Fig. 2).

Claim 2:

Wherein said sanitary cove base is constructed from material selected from the group

consisting of PVC-polyvinyl chloride (see col. 2, line 48).

Claims 3-5:

It should be noted that claims 3-5 are considered product-by-process claims; therefore, determination of patentability is base on the product itself. See MPEP 2113. The patentability of the product does not depend on its method of production. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 Fed 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985)

Claim 24:

Further comprising a lower end having a large, lower channel 34 extending therethrough; and a vertical portion 36, wherein said vertical portion comprises at least a first part of said outer wall; at least a first part of said inner wall; and a plurality of hollow channels, wherein said plurality of hollow channels comprises an upper, small hollow channel; and a lower, small hollow channel (see Fig. 2).

Claim 32:

Wherein said sanitary cove base further comprises a top wall 22; a sweep wall 36; a floor wall 38; a bottom wall 56; and a chamfer wall 32.

Claim 34:

Further comprising a first plurality of screw insertion holes through said inner wall and adapted to accept an attachment screw; and a second plurality of buttons, each button being frictionally received in one of said first plurality of screw insertion holes (see col. 4, line 39).

Claims 1 and 6-7, 10-12, 14, 16-19, and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 6,324,796 to Heath.

Claim 1:

Heath discloses a sanitary cove base comprising an outer wall 11; an inner wall 12; a plurality of longitudinally-extending web members 28 existing between said outer wall and said inner wall, thereby connecting said outer wall to said inner wall; and a plurality of hollow channels (see Fig. 1), each hollow channel being defined between said inner wall, said outer wall, a first longitudinally-extending web member of said plurality of longitudinally-extending web members, and a next adjacent longitudinally-extending web member of said plurality of longitudinally-extending web members.

Claim 6:

Wherein said sanitary cove base further comprises an interior surface of said inner wall; a wall-facing surface of said outer wall; a top surface; and a bottom surface (see Fig. 1).

Claims 7, 16:

Wherein said interior surface of said inner wall further comprises a sanitary sweep 16; and an abutment surface 21; and wherein said wall-facing surface of said outer wall further comprises a chamfer 32 (Fig. 2); a plurality of adhesive ridges 33; a plurality of relief valleys 31; and a wall-contact crest 19.

Claim 10:

Wherein said top surface extends horizontally between said wall-facing surface and said interior surface (Fig. 1).

Claim 11:

Wherein said top surface extends between said wall-facing surface and said interior surface, and wherein said top surface is substantially horizontal adjacent to said wall-facing surface and is substantially vertical adjacent to said interior surface.

Claim 12:

Wherein said top surface extends between said wall-facing surface and said interior surface, and wherein said top surface slopes downwardly at 17 between said wall-facing surface and said interior surface.

Claim 14:

Wherein said top surface is flat (Fig. 1).

Claims 17 and 19:

Further comprising a wall-contact crest 14 extending rearwardly from said wall-facing surface of said outer wall, wherein said plurality of relief valleys 31 comprises an upper relief valley, wherein said plurality of sections of adhesive ridges 33 comprises an upper section of adhesive ridges, and wherein said upper relief valley separates said upper section of adhesive ridges from said wall-contact crest (see Figs. 1-2).

Claim 18:

Wherein a top sidewall of said upper relief valley connects said wall-contact crest to a floor of said upper relief valley (see Figs. 1-2).

Claim 22:

Wherein said hollow channels extend longitudinally through the sanitary cove base.

Claim 23:

Further comprising a first longitudinal end and a second longitudinal end, and wherein said hollow channels extend between said first longitudinal end and said second longitudinal end (see Figs. 1-2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9, 15, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,324,796 to Heath.

Heath discloses the claimed invention as stated above but does not disclose expressly wherein said top surface has a width of approximately 0.438 inches, and wherein said abutment surface has a height of approximately 0.500 inches wherein said abutment surface is displaced forwardly from said interior surface of said inner wall by a distance of approximately 0.500 inches, and wherein the sanitary cove base has an overall height from said bottom surface to said top surface of approximately 8.0 inches, wherein each adhesive ridge within a first section of adhesive ridges is displaced from a next adjacent adhesive ridge in said first section of adhesive ridges by a distance of approximately 0.125 inches, and wherein said adhesive ridges extend rearwardly from said wall-facing surface of said outer wall approximately 0.063 inches.



However, this feature would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such a specific dimension for the width, height and distance of the inner wall for desirable application. Furthermore, applicant has not disclosed the criticality of this feature.

Claims 25-31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,457,287 to Wilcox.

Claims 25-27 and 30:

Wilcox discloses the claimed invention as stated and further including wherein said sanitary cove base comprises a lower end, wherein a large, lower channel 34 extends through said lower end; and a vertical portion, wherein said vertical portion comprises a plurality of hollow channels 30, and wherein said plurality of hollow channels comprises a top hollow channel; a second hollow channel, said second hollow channel located below said top hollow channel; a third hollow channel, said third hollow channel located below said second hollow channel, a fourth hollow channel, said fourth hollow channel located below said third hollow channel; a fifth hollow channel, said fifth hollow channel located below said fourth hollow channel; a sixth hollow channel, said sixth hollow channel located below said fifth hollow channel (see Figs. 5-7) but does not disclose expressly a seventh hollow channel, said seventh hollow channel located below said sixth hollow channel; an eighth hollow channel, said eighth hollow channel located below said seventh hollow channel; and a ninth hollow channel, said ninth hollow channel located below said eighth hollow channel and above said large, lower

channel. It would have obvious to one having ordinary skill in the art at the time the invention was made to have more channels (e.g. seventh, eight, ninth channel) since it has been held that mere duplication of the essential working parts of a device involves only routine in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claims 28-29, 31, and 33:

Wilcox discloses the claimed invention as stated but does not disclose expressly wherein said top hollow channel is approximately 0.636 inches high vertically; said second hollow channel is approximately 0.942 inches high vertically; said third hollow channel is approximately 0.404 inches high vertically; said fourth hollow channel is approximately 0.754 inches tall vertically; said fifth hollow channel is approximately 0.923 inches tall vertically; said sixth hollow channel is approximately 0.861 inches tall vertically; said seventh hollow channel is approximately 0.504 inches tall vertically; said eighth hollow channel is approximately 0.404 inches tall vertically; said ninth hollow channel is approximately 0.817 inches tall vertically; and said large, lower channel is approximately 0.641 inches tall vertically, wherein each of said hollow channels is approximately 0.125 inches wide between said inner wall and said outer wall, and wherein each of said nine web members is approximately 0.096 inches thick vertically, and wherein said top wall, said inner wall, said sweep wall, said floor wall, said bottom wall, said chamfer wall, and said outer wall are all approximately 0.125 inches thick. However, these features would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made. Furthermore, applicant has

not disclosed the criticality of these features.

***Allowable Subject Matter***

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached at (571) 272-6777.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

  
CQN  
12/21/2007

/JEANETTE CHAPMAN/  
PRIMARY EXAMINER